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**BASE AGREEMENT ESCO CONTRACT FOR AS-NEEDED  
ENERGY PERFORMANCE CONTRACTING SERVICES**

**FOR THE COLORADO ENERGY PERFORMANCE  
CONTRACTING PROGRAM**



**THE GOVERNORS ENERGY OFFICE**

**225 East 16th Avenue, Suite 650**

**Denver, CO 80203**

**CONTRACT ROUTING NO.** \_\_\_\_\_

**AGENCY IDENTIFICATION NO.** \_\_\_\_\_

Firm Name \_\_\_\_\_

Contact Person \_\_\_\_\_

Full Address \_\_\_\_\_

Phone; Fax \_\_\_\_\_

**Exhibit 1:** Cost and Pricing Elements

**Exhibit 2:** Contract Renewal Option Letter

**Exhibit 3:** Project Metrics Report for GEO

## BASE AGREEMENT ESCO CONTRACT FOR AS-NEEDED ENERGY PERFORMANCE CONTRACTING SERVICES

**NOTE:** This agreement will be reviewed by the Office of the Attorney General and the Office of the State Controller and will be modified as needed to comply with state requirements; however, the general intent will remain the same.

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ between the State of Colorado Governor's Energy Office, hereinafter called GEO, and \_\_\_\_\_, hereinafter called the Contractor.

**WHEREAS,** GEO, through its Colorado Energy Performance Contracting Program (CEPCP), used a state-approved RFP process to select ESCOs to provide as-needed energy performance contracting services;

**WHEREAS,** GEO will maintain a list of pre-qualified ESCOs that are eligible for final selection by Colorado's state and local governments to provide performance contracting services.

**NOW, THEREFORE,** it is agreed that:

1. **Entire Agreement** – The entire contract consists of the following attachments which are incorporated by reference: **Attachment B**, the ESCo Response To Request For Proposals For As-Needed Energy Performance Contracting Services; **Attachment C**, the GEO Secondary ESCo Selection Process; **Attachment D**, the GEO Technical Energy Audit & Project Proposal Contract; **Attachment E**, the GEO Energy Performance Contract; **Attachment F**, the GEO Financing Bid Package; and **Attachment G**, any GEO Facility Owner's Memorandum Of Understanding issued through this Base Agreement.
2. **Purpose of Contract.** The purpose of this Contract is to provide the Contractor the ability to participate in the Colorado Energy Performance Contracting Program (CEPCP) for development and implementation of Energy Performance Contracting (EPC) projects, to ensure the program's standard processes, procedures, and documentation that will be used and to obligate Contractor to follow and adhere to the guidelines, rules, and provisions of the program.

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### **3. Term of Contract, Renewals, Performance Review, Disqualification.**

This Base Agreement shall become effective on the date it is approved by the State Controller and shall terminate on June 30<sup>th</sup>, 2008.

GEO shall have the option to renew this Base Agreement on or before June 30<sup>th</sup> of each fiscal year for a maximum of four one-year terms by executing the Option Letter attached and incorporated as Exhibit 2 to this Contract. No contracts will extend beyond June 30, 2012.

Services for any CEPCP participant can extend beyond the life of the Base Agreement with all terms and conditions remaining in effect until the work is complete. Contractor's performance will be reviewed annually by GEO/CEPCP for compliance with guidelines, requirements, process, and documentation. Failure to comply with program guidelines may result in disqualification. Should Contractor be deemed non-compliant during any annual review or during a contract year, at the GEO/CEPCP's sole discretion this Contract may be terminated without regard to any time remaining in the term. A terminated firm will remain disqualified for the remainder of the five-year period covered by this contract.

**4. Consideration.** In consideration for entering into this Contract, Contractor shall be eligible for participation in the GEO/CEPCP.

**5. Responsibilities of Contractor.** The responsibilities of the Contractor shall include, but are not necessarily limited to:

***Marketing and Preliminary Project Evaluation***

- a) ESCO shall identify and secure on behalf of the Facility Owner all available energy/demand/water saving and renewable energy utility incentives available to each project. In addition, the ESCO shall provide a utility incentive/rebate summary to the GEO, in a format to be determined, documenting correspondence with the utility company indicating all incentives that were applied for and secured on behalf of the Facility Owner including: emails, letters, rebate applications, etc.
- b) Promote the GEO/CEPCP when marketing directly to Facility Owners (within market sectors defined by GEO/CEPCP)
- c) Engage the GEO/CEPCP immediately upon identifying a potential energy performance contract project
- d) Perform an initial evaluation of project potential and discuss with the Facility Owner
- e) Provide a dedicated webpage for GEO/CEPCP participants (e.g., [www.ESCONAME/COLORADOGEO](http://www.ESCONAME/COLORADOGEO)), where Facility Owners that seek ESCO services can gain access to the full proposal and any updated information. The GEO/CEPCP website will provide a link to the ESCO website for this purpose.

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### ***Technical Energy Audit and Project Development***

- a) Develop a GEO/CEPCP Technical Energy Audit and Project Development Contract with the Facility Owner
- b) Comply with all requirements of the Technical Energy Audit and Project Development Contract (Attachment F), including but not limited to: conduct an Technical Energy audit, prepare a detailed technical and financial proposal for the project, help arrange for or procure financing, and develop a monitoring and verification plan.
- c) Assign individuals to the project team representing project development, engineering, project management, monitoring and verification, and upper management support
- d) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
- e) Address issues, recommendations and requests from GEO/CEPCP in support of the GEO/CEPCP independent technical review and facilitation process

### ***Energy Performance Contract Project Implementation***

- f) Develop a GEO/CEPCP Energy Performance Contract with the Facility Owner based upon results of the Technical Energy Audit
- g) Comply with all requirements of the GEO/CEPCP Energy Performance Contract (Attachment G), including but not limited to: design services, equipment procurement and purchasing, construction and construction management services, hazardous material abatement or disposal, commissioning services on installed measures and monitoring and verification services.
- h) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
- i) Address issues, recommendations and requests from GEO/CEPCP in support of the GEO/CEPCP independent technical review and facilitation process
- j) Provide GEO/CEPCP with an electronic copy of the final contract.
- k) Provide a post-implementation report to Facility Owner and GEO/CEPCP

### ***Performance Period:***

- l) Comply with all requirements of the GEO/CEPCP Energy Performance Contract, including but not limited to: measurement and verification reporting and services, guarantee of performance and cost savings, maintenance and/or repair of equipment, training for facility personnel on maintenance and operation of systems, and training for occupants.
- m) Provide the Facility Owner and GEO/CEPCP with annual reports on project cost, status, savings achieved, and square footage impacted by the project as given in Exhibit 3.
- n) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
- o) Address issues, recommendations and requests from GEO/CEPCP in support of the GEO/CEPCP independent technical review and facilitation process

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**6. Responsibilities of GEO/CEPCP and Participating Facility Owners.** The responsibilities for GEO/CEPCP include, but are not necessarily limited to:

***From GEO/CEPCP:***

- a) Actively promote the program and educate potential participants about the benefits and implementation of energy performance contracts.
- b) Work with Facility Owners to become program participants and to commit to a Facility Owner Agreement
- c) Help Facility Owner procure services of an ESCO from the pre-qualified list.
- d) Provide information on the website for currently pre-qualified ESCOs, as provided and updated by the ESCO, providing a link to the ESCO's website for more detailed information.
- e) Help Facility Owner develop and initiate a performance contracting project.
- f) Facilitate the performance contracting process, to help ensure commitments are met by both the Facility Owner and the ESCO
- g) Provide technical guidance to the Facility Owner, attending on-site meetings between the Facility Owner and ESCO as needed
- h) Help develop the GEO/CEPCP Standard Technical Energy Audit and Energy Performance Contracts for each project
- i) Review audits, proposals, calculations, contracts, and measurement and verification reports
- j) Monitor project implementation
- k) Identify solutions to mediate any conflicts between Facility Owner and ESCO

***From the Facility Owner:***

- l) Agree to program participation by executing a Facility Owner Memorandum of Understanding and engage the GEO/CEPCP for assistance in project development
- m) Select an ESCO from the current pre-qualified list, using a secondary selection process
- n) Assign members to the facility project team including operations, maintenance, financial and upper management personnel
- o) Ensure appropriate personnel attend project development meetings dependent upon the subject matter to be discussed
- p) Provide access and escort to buildings
- q) Provide information as needed for the feasibility study, the Technical Energy Audit, and other project development activities
- r) Work with ESCO to develop/refine project parameters
- s) Review/approve ESCO proposals, designs, and reports
- t) Ensure recommendations of the GEO/CEPCP during reviews are addressed
- u) Execute GEO/CEPCP approved contracts with the ESCO
- v) Make payments for ESCO services per contract terms
- w) Make arrangements for project financing
- x) Provide project management
- y) Provide information as needed for measurement and verification activities

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## **SPECIAL PROVISIONS**

The Special Provisions apply to all contracts except where noted in italics.

1. **CONTROLLER'S APPROVAL. CRS 24-30-202 (1).** This contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

2. **FUND AVAILABILITY. CRS 24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

*[Applicable Only to Intergovernmental Contracts]* No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

4. **INDEPENDENT CONTRACTOR. 4 CCR 801-2.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.

5. **NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

7. *[Not Applicable to Intergovernmental Contracts]* **VENDOR OFFSET. CRS 24-30-202 (1) and 24-30-202.4.** The State Controller may withhold payment of certain debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.

8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. **EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.

10. *[Not Applicable to Intergovernmental Contracts].* **ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS. CRS 8-17.5-101 and 24-76.5-101.** Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and Contractor shall be liable for actual and consequential damages.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) shall produce one form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

*Revised October 25, 2006*

***Effective Date of Special Provisions: August 7, 2006***

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in original and three counterparts at Denver, Colorado the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**STATE OF COLORADO**

Bill Ritter, Jr., Governor

By \_\_\_\_\_  
Tom Plant, Director  
Governor's Energy Office

(Corporate Seal)

**ATTEST**

\_\_\_\_\_  
Secretary

**THE ESCO**

\_\_\_\_\_  
Signature

By \_\_\_\_\_  
Name (print) Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Social Security Number or Federal ID Number

**SIGNATURES:**

If the ESCO is doing business as a Corporation, the Agreement shall be signed by an officer i.e., President or Vice-President. The signature of the officer signing shall be attested to by the Secretary and properly sealed if corporate seal is available. If the ESCO is a sole proprietorship or a partnership, the Agreement shall so indicate and be properly signed.

**APPROVALS**

ALL CONTRACTS MUST BE APPROVED BY THE STATE

**CONTROLLER:**

CRS 24-30-202 requires that the State Controller approve all State contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the good and/or services provided.

**APPROVED:**

STATE OF COLORADO

STATE CONTROLLER'S OFFICE

State Controller (or authorized Delegate)

By: \_\_\_\_\_

Date: \_\_\_\_\_

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**EXHIBIT 1**

## **Cost and Pricing Elements**

### **1. Costs, Markups, and Fees**

Cost, markups, and fees shall not exceed the maximums established in the table below. Cost for performing the Technical Energy Audit and maximum project markups and fees for pre-defined categories shall be per the following schedules. Markups on fees are not allowable under the CEPCP.

<b>MARK-UPS</b>		
<b><i>CATEGORY OF MARK-UP</i></b>	<b><i>MARK-UP APPLICATION</i></b>	<b><i>MAXIMUM % MARK-UP</i></b>
Overhead		
Profit		
Labor - Internal		
Equipment Purchased		
Materials Purchased		
Subcontract Labor		
Subcontract Material		



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<b>FEES</b>		
<b><i>CATEGORY OF FEE</i></b>	<b><i>MAXIMUM FEE AMOUNT</i></b>	<b><i>YEARS APPLIED (One-time, Annual, etc.)</i></b>
Technical Energy Audit and Project Development	___ per Square Foot	
Solicit & Evaluate Project Financing Proposals		
Design	(Example) ___ % of _____	
Project Management		
Contingency		
Permits		
Performance Bond		
Commissioning		
Initial Training on Installed Measures		
Additional Training		
Monitoring and Verification		
Warranty Service		
Maintenance on Installed Measures		

Facility owners may choose to accept audit costs, markups, and fees proposed by Contractor for individual projects without further negotiation, provided they do not exceed the maximums established in the tables above, or directly negotiate with Contractor for reductions as dictated by individual facility or project requirements. Contractor may also propose lower audit costs, markups, and fees depending upon individual project considerations or their own internal business approach.

## 2. Open Book Pricing

Open book pricing is full disclosure by the Contractor to the facility owner of all costs and markups for materials, labor, and services received during the project development, implementation, and performance period phases. Open book pricing will be required such that the Contractor will fully disclose all costs, including all costs of subcontractors and vendors. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices to ensure the Contractor's prices are reasonable and acceptable and that markups are being properly applied.

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**EXHIBIT 2**

***ANNUAL RENEWAL OPTION LETTER***

**BASE AGREEMENT ESCO CONTRACT FOR  
AS-NEEDED ENERGY PERFORMANCE CONTRACTING  
SERVICES**

**SUBJECT: Option To Renew As-Needed Base Agreement**

In accordance with the Base Agreement with the effective date \_\_\_\_\_ between the Governor's Energy Office (GEO), and \_\_\_\_\_ for as-needed energy performance contracting services, GEO hereby exercises the option for an additional term of one year, **contract routing number** \_\_\_\_\_, incorporating by reference all the terms and conditions set forth in the As-Needed Base Agreement ESCO Contract.

Enclosed is one copy of your firm's submitted renewal information.

Your firm will be listed as eligible for selection for as-needed energy performance contracting services through GEO/CEPCP.

**APPROVALS:**

Governor's Energy Office  
Tom Plant, Director

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

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## **EXHIBIT 3**

### ***PROJECT METRICS REPORT FOR GEO***

A Project Metrics Report shall be submitted to GEO as data are available and at the end of each year of this contract. Submission of this report is a minimum requirement for contract renewal. Submission will be completed electronically on a website developed by GEO. GEO will supply an electronic spreadsheet (under development) that shall be completed to the extent possible for each project and submitted electronically to GEO. This information is critical to GEO's ability to monitor projects and to calculate CO2 reductions state-wide that result from program successes.

Other information may be identified and required by the GEO in order to meet the requirements of State agencies, Executive Orders, legislation, and other initiatives.